

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SAFECO INSURANCE COMPANY OF	)	No. C-04-1977-SC
AMERICA,)	
)	
Plaintiff,	)	ORDER GRANTING
	)	PLAINTIFF'S MOTION TO
v.	)	(1) ALTER AND AMEND
	)	JUDGMENTS AND (2)
	)	AMEND FINDINGS OF
LORI CHIANG, ROBERT CHIANG, and	)	FACT AND CONCLUSIONS
CHIANG CM CONSTRUCTION COMPANY,	)	OF LAW FOLLOWING
INC.,	)	TRIAL
	)	AND
Defendants.	)	GRANTING PLAINTIFF'S
	)	MOTION FOR ATTORNEY'S
	)	<u>FEEES FOLLOWING TRIAL</u>

I. INTRODUCTION

Before the Court are two related motions by Plaintiff Safeco Insurance Company of America ("Plaintiff" or "Safeco"), which Defendants Lori Chiang, Robert Chiang, Chiang CM Construction Company, Inc. ("Defendants") have opposed: Plaintiff's Motion to Alter and Amend Judgments and Amend Findings of Fact and Conclusions of Law Following Trial ("Motion to Amend"); and Plaintiff's Motion for Attorney's Fees Following Trial ("Motion for Fees"). See Docket Nos. 92, 95. For the following reasons, the Court hereby GRANTS Plaintiff's Motion to Amend and GRANTS

Plaintiff's Motion for Fees.

II. MOTION TO AMEND

The Motion to Amend seeks the following relief:

(1) Alter and Amend the findings contained within the Order Denying Plaintiff's Motion for Summary Judgment, dated and entered on July 6, 2006 (the "July Order," Docket entry #52) to include a finding that Safeco is entitled, as a matter of law to recover against defendants, jointly and severally, its attorney's fees incurred in the prosecution of the instant lawsuit, which order subsequently became judgment by operation of law on December 4, 2006 (the "December 4 Judgment");

(2) Amend the Findings of Fact and Conclusions or Law, dated and entered November 30, 2006 (the "Findings," Docket entry #84) to include a finding that Safeco is entitled, as a matter of law, to recover against defendants, jointly and severally, its attorney's fees incurred in the prosecution of the instant lawsuit; and

(3) Alteration and amendment of the December 1 Judgment to include a determination that Safeco is entitled to recover against defendants, jointly and severally, its attorney's fees incurred in the prosecution of the instant lawsuit.

Motion to Amend at 2-3. In opposition, Defendants makes both procedural and substantive arguments in defense, all of which fail.

A. Legal Standard

A court is given broad discretion to alter or amend its prior orders if it "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." School Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

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1 B. Discussion

2 1. Plaintiff's Motion to Amend is Timely

3 Defendants argue that Plaintiff's Motion to Amend is untimely
4 and should be denied on this ground. Opp. to Mot. to Amend at 4.
5 Specifically, Defendants complain that Plaintiff's Motion to Amend
6 was filed on December 15, 2006, which is more than ten days after
7 the Court rendered its Final Judgment on December 1, 2006.
8 Federal Rule of Civil Procedure Rule 59(e) gives parties ten days
9 after the entry of a judgment to file any motion for its
10 alteration or amendment. However, Rule 6(a) provides that "[w]hen
11 the period of time prescribed by [a rule] is less than 11 days,
12 intermediate Saturdays, Sundays, and legal holidays shall be
13 excluded in the computation." December 2, 2006 was a Saturday;
14 and December 3, 2006 was a Sunday. Thus, the Motion to Amend was
15 timely.

16 2. Plaintiff is Not Barred from Making the Motion to
17 Amend

18 Defendants, more-or-less without argument, assert that
19 Plaintiff should be barred from making the Motion to Amend on the
20 grounds that 1) Plaintiff already submitted a motion for
21 reconsideration dealing with similar issues, which was denied, and
22 2) Plaintiff submitted the draft judgment which it now seeks to
23 amend. See Opp. to Mot. to Amend at 2, 8. There is no legal
24 authority for barring Plaintiff from making its Motion to Amend on
25 these grounds.

26 3. The July Order Reaches an Erroneous Conclusion

27 The July Order dismissed Safeco's prayer for attorney's fees
28 in the instant action on the grounds that "absent a contractual

1 provision specifying an award of attorney fees in an action to
2 enforce an indemnity agreement, current California law holds that
3 an indemnity agreement does not include recovery of attorney fees
4 incurred in enforcing the agreement;" and such a provision was
5 absent from the General Agreement of Indemnity for Contractors
6 concluded by the parties on January 18, 1998 ("Indemnity
7 Agreement"). July Order at 10. This statement of law is correct.
8 See Continental Heller Corp. v. Amtech Mechanical Services, Inc.,
9 53 Cal. App. 4th 500, 508 (1997). However, the Court's reading of
10 the Indemnity Agreement was erroneous.

11 The Indemnity Agreement states that, upon demand, the
12 undersigned (Defendant) shall pay the surety (Plaintiff) "all
13 loss, costs and expenses of whatsoever kind and nature, including
14 court costs and attorneys fees . . . , consultant fees,
15 investigation costs and any other losses, costs or expenses
16 incurred by Surety by reason of having executed any Bond, or
17 incurred by it on account of any Default under this agreement by
18 any of the Undersigned." Indemnity Agreement (Admitted in to
19 Evidence as Plaintiff's Ex. 1) at 1 (emphasis added). The
20 Indemnity Agreement defines "default" to include, inter alia, when
21 the undersigned "[b]reaches, fails to perform, or comply with any
22 provision of this agreement." Id. After trial on the merits, the
23 Court found that Defendants had breached the Indemnity Agreement.
24 See Findings of Fact and Conclusions of Law, Docket No. 84, at 7.
25 Thus, the Court FINDS as a matter of law that Defendants are
26 jointly and severally liable to Plaintiff for reasonable attorneys
27 fees incurred in Plaintiff's prosecution of this action. The July
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Order is hereby AMENDED to so read. Accordingly, the Court will AMEND and REISSUE its Findings of Fact and Conclusions of Law and will ISSUE an Amended Judgment to reflect this modified finding.

III. Motion for Attorney's Fees

Plaintiff requests a total of \$69,747.50 in attorney's fees. See Plaintiff's Submission in Connection with their Motion for Fees, Docket No. 109. Having determined that Plaintiff is entitled to attorney's fees as a matter of law and having found that the amount of attorney's fees requested are reasonable, the Court hereby GRANTS Plaintiff's Motion for Fees.

A. Legal Standard

This case is before the Court on diversity jurisdiction; thus, California state law governs the Court's evaluation of the Plaintiff's Motion for Fees. See Michael-Regan Co., Inc. v. Lindell, 527 F.2d 653, 656 (9th Cir. 1975). California Civil Code § 1717 provides for reciprocal enforcement of any contractual provision for attorney's fees. In other words, even if the contractual provision of attorney's fees operates only in the direction of one party to the contract, a court shall award attorney's fees to whichever party prevails. See Cal. Civ. Code § 1717(a). In doing so, "[r]easonable attorney's fees shall be fixed by the court." Id. According to the California Supreme Court, this gives the Court "broad authority to determine the amount of a reasonable fee." PLCM Group v. Drexler, 22 Cal.4th 1084, 1095 (2000). "Ordinarily," a court exercising this authority "begins with the 'lodestar,' i.e. the number of hours

1 reasonably expended multiplied by the reasonable hourly rate."
2 Id. The party opposing a motion for attorney's fees on the ground
3 that the amount requested is unreasonably high must support such
4 opposition with particularized objections to the requested
5 amounts. See Avikian v. WTC Financial Corp., 98 Cal.App.4th 1108,
6 1119 (2002).

7 B. Discussion

8 Applying this standard, the Court finds that the amount of
9 fees requested by Plaintiff are reasonable. According to the
10 declaration submitted in support of the Motion, for Fees the five
11 attorneys who billed time on the matter billed at rates from
12 \$170.00 to \$240.00 per hour; and paralegals working on the case
13 were billed at \$115.00 an hour. See Beierle December 15, 2006
14 Decl., Docket No. 97, at 4-5. These rates are reasonable in light
15 of the experience of the attorneys involved. The number of hours
16 worked also seems reasonable given the history of the litigation
17 and Plaintiff's ultimate success. See id.; Beierle January 26,
18 2007 Decl., Docket No. 110.

19 Defendants argue, generally, that they should be given
20 additional time to address Plaintiff's request for fees "[b]ecause
21 it is likely that the court will deny an award of any attorney's
22 fees in light of" Defendants' arguments regarding Plaintiff's
23 Motion to Amend. Opp. at 8. The Court does not agree.
24 Defendants were given more than sufficient time to review and
25 address the figures submitted by Plaintiff, and if Defendants were
26 nonetheless unable to do so, Defendants should have submitted a
27 formal request to the Court for additional time. What's more,
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1 even if such a formal request had been submitted, it would have
2 been denied if the only ground stated in support was Defendants'
3 (incorrect) presumption that they would prevail in their
4 opposition to Plaintiff's Motion to Amend.

5 Defendants' particular objections also fail. First,
6 Defendants object to fees related to Safeco's Motion for Summary
7 Judgment on the ground that the motion was unsuccessful. The
8 Court in its determination is concerned with the ultimate success
9 or failure of the litigation as a whole, not the success or
10 failure of particular motions. Second, Defendants complain that
11 two attorneys, as opposed to one, were billed during trial. It
12 was not unreasonable for Plaintiff to have enlisted the assistance
13 of two attorneys during trial, especially in light of the fact
14 that one of those attorneys also appeared as a witness and needed
15 to be examined by the other. Third, Defendants object to the
16 amount charged for representation at trial on the grounds that
17 Defendants relied on the Court's prior ruling that Plaintiff was
18 not eligible to collect fees. This argument is irrelevant to the
19 task at hand, determining the reasonableness of the fees
20 requested, and so fails. Finally, Defendants object to certain
21 charges which are not supported by invoice exhibits. This is
22 without basis in the law: local rules do not require the
23 submission of invoices to support requests for attorney's fees.
24 See Civil L.R. 54-6(b).

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26 **IV. CONCLUSION**

27 For the foregoing reasons, Plaintiff's Motion to Amend is
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1 GRANTED and Plaintiff's Motion for Fees is GRANTED in the amount
2 of \$69,747.50, jointly and severally, against Defendants.

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4 IT IS SO ORDERED.

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6 Dated: February 7, 2007

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9 UNITED STATES DISTRICT JUDGE
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